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भारत का राजपत्र

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सं. 36] वह विली, शनिवार, दिसम्बर 3, 1988/अग्रहायण 12, 1910
No. 36] NEW DELHI, SATURDAY, DECEMBER 3, 1988/AGRAHAYANA 12, 1910

इस भाग में भिन्न पृष्ठ संख्या की जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके।

Separate Paging is given to this Part in order that it may be filed as
a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (III)
PART II—Section 3—Sub-section (III)

(लघु राज्य कानून प्रकाशनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

वह विली, 7 नवम्बर, 1988

आदेश

आ.आ. 112—भारत निर्वाचन आयोग का समाधान हो गया है कि श्री बी. थोंगो, बी.पी.ओ. टीबू, जो नागालैंड विधान सभा के लिए 55-टोबू (अ.ज.जा.) विधान सभा निर्वाचन धोत्र से द्वारा साधारण निर्वाचन में अम्बवर्धी थे, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्विधीन बनाए गए नियमों द्वारा यथा अधिकारियों का सेवा दाखिल करते में असफल रहे हैं,

और श्री बी. थोंगो ने सम्पर्क सुनना दिए जाने पर भी उक्त असफलता के लिए कोई कारण या स्पष्टीकरण नहीं दिया है, और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पारिपत्र कारण या शायांचित्य नहीं है;

अतः अब, निर्वाचन आयोग, उक्त अधिनियम की धारा 10-A के अनुसार में श्री बी. थोंगो को समाद के किसी भी मदन के लाभ किसी ग़ज़य की विधान सभा अधिकार परिषद् के

संवस्थ चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिए निराहित घोषित करता है।

[सं. 76/नागालैंड/88(8)]

आदेश से,

एम. डी. प्रसाद, अवर सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 7th November, 1988

ORDER

O.N. 112.—Whereas the Election Commission is satisfied that Shri B. Thongo of B.P.O. Tobu, a contesting candidate for the general election to Nagaland Legislative Assembly from 55-Tobu (ST) Assembly Constituency has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, Shri B. Thongo has not furnished any reason or explanation for the said failure even after due notice and the Election Commission is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares Shri B. Thongo

to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

[No. 76/NL/88(8)]

By order,

S. D. PERSHAD, Under Secy.

नई दिल्ली, 8 नवम्बर, 1988

आ. अ. 113.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन अधिनियम, 1985 की निर्वाचन याचिका सं. 2 में तारीख 11-10-1988 का बम्बई उच्च न्यायालय, औरंगाबाद का आदेश इसके द्वारा प्रकाशित करता है।

[सं. 82/महा०न्ल००स०/2/85]

आदेश से,
दी० सी० सिंघल, अवर सचिव

New Delhi, the 8th November, 1988

O.N. 113.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the High Court of Bombay at Aurangabad dated 11-10-1988 in Election Petition No. 2 of 1988.

[No. 82/MT-HP/2/85]

By Order.

T. C. SINGHAL, Under Secy.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
AT AURANGABAD

ELECTION PETITION NO : 2 OF 1985

Kondappa Sadashiv Kore
age major, occ. Agri r/o
Tadwala Taluka and
District Osmanabad.

Petition
—versus—

Arvind Tulshiram Kamble
age adult occ. Member of
Parliament r/o Navi Abadi

Udgir District Latur.

...RESPONDENT

Mr. Shivajirao Scindia, Advocate for the Petitioner Mr. K. G. Nawander and Mr. B. R. Sontakke Patil Advocates for the Respondent.

Mr. D. Y. Lovekar, for Attorney General of India.

CORAM : K. N. PATIL J

Tuesday, the 11th Day of October, 1988

JUDGMENT :

This is an election petition calling in question election of the Respondent to Parliament on the ground specified under sub-section (1)(c) of Section 100 of the Representation of the People Act, 1951 (hereinafter referred to as "Act"). Petitioner prays for a declaration that the election of Respondent is void on the ground that the nomination paper of the Petitioner was improperly rejected by the Returning Officer.

2. The election petition was originally filed by Advocate Shri Shivajirao Rangrao Chede as an elector. Mr. Scindia, learned Counsel for the Petitioner Cheds, informed the Court that the Petitioner was not in a position to prosecute the petition in view of his mental deranged condition. The Court, therefore, directed to publish a notice in the government Gazette requiring some-one from the Constituency to come forward to proceed with the petition. Accordingly the present Petitioner Kondappa Sadashiv Kore, who was candidate in the election, filed an application which was allowed and he has been substituted in place of the original petitioner.

3. Petitioner Kondappa Sadashiv Kore stood as a candidate for the election to the VIIIth Lok Sabha. The election to VIIIth Lok Sabha from "36-Osmanabad (S.C.) Parliamentary Constituency" was held during the last General Election as per the following schedule—

(a) Last date of filing nomination paper.	November 27, 1984
(b) Date of scrutiny of nomination papers.	November 28, 1984
(c) Last date of withdrawal of candidature.	November 30, 1984
(d) Date of Poll	December 27, 1984
(e) Date of declaration of result of Election.	December, 28, 1984

4. Petitioner filed his nomination paper before the Returning Officer at Osmanabad on November 23, 1984. About seventeen candidates including the Respondent—Arvind Tulshiram Kamble filed nomination papers before the Returning Officer on different dates. On November 28, 1984 the nomination papers were taken up for scrutiny, when the Returning Officer rejected the nomination paper of the Petitioner Kondappa Sadashiv Kore and accepted the nomination papers of sixteen candidates. Ten candidates withdrew their nomination papers and finally six candidates remained in the contest on November 30, 1984. On December 27, 1984 poll was held and Respondent Arvind Kamble secured largest number of votes and was declared. At the time of evidence Respondent stated that he was elected by more than 57,000 votes.

5. It is not disputed that '36-Osmanabad Parliamentary Constituency' is a reserved Constituency. It is alleged that the Petitioner belongs to Longader caste which is scheduled caste. Along with the nomination paper the Petitioner had filed caste certificate issued by Dr. Padole (PW 2) Special Executive Magistrate, Nagpur and before the scrutiny he filed a certificate dated November 24, 1984 issued by the Tahsildar, Barahi. At the time of scrutiny of the nomination papers on November 28, 1984 the Returning Officer suo motu objected to the nomination paper filed by the Petitioner and rejected it on the ground that the caste certificate was not issued by the competent authority. It is contended by the Petitioner that no inquiry contemplated under Section 32 of the Act was held. Due to the rejection of the nomination paper of the Petitioner he could not contest the election. The only ground raised in the petition is that the nomination paper of Petitioner Kore was improperly rejected by the Returning Officer.

6. Respondent Arvind Tulshiram Kamble filed his written statement (exhibit 6). He has denied that the Petitioner belongs to 'Lingder' caste. According to the Respondent filed false and bogus certificate issued by the Special Executive Magistrate, Nagpur. After the certificate was filed, Petitioner was informed by the Returning Officer that the certificate was not issued by the competent authority and therefore, he must bring proper certificate. Petitioner gave undertaking that he would bring certificate from the Taluka Executive Magistrate. Accordingly, Petitioner brought certificate from the Executive Magistrate, Barshi, which, according to the Returning Officer, was not issued by the competent authority. Petitioner did not satisfy the Returning Officer that he belongs to Scheduled Caste i.e. Lingder caste and therefore, his nomination was rejected. It is contended by the Respondent that the Petitioner is a Hindu Teli which

is not a scheduled caste. In the school record of the Petitioner his caste is recorded as Hindu Teli but the Petitioner in the year 1983 after obtaining the certificate from the Special Executive Magistrate, Nagpur, got his caste entered as 'Lingder'. It is contended that since the Petitioner does not belong to scheduled caste he is not qualified to contest the election from the reserved constituency. The nomination paper of the Petitioner was, therefore, properly rejected by the Returning Officer. Inter alia, it is contended that Section 100(1)(c) of the Act is violative of Article 14 of the Constitution of India.

7. The issues framed are as follows :—

ISSUES	FINDINGS
(i) Does the Petitioner prove that his nomination paper was improperly rejected ?	... No
(ii) If yes, what is the consequence of improper rejection ?	... Does not arise
(iii) Whether Petitioner Kondappa Sadashiv Kore is a member of Lingder community which is a Scheduled Caste and not Hindu Teli ?	... No. He is not Lingder.
(iv) What order ?	... As per final Order.

8. The real question that arises for determination in this petition is whether the Petitioner is qualified to contest the election. Section 4(a) of the Act provides that a person shall not be qualified to be chosen to fill a seat in the House of the People unless—in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency. There is no dispute that Lingder caste is a scheduled caste. The controversial question is whether the Petitioner belongs to Lingder caste. It is obvious that the onus to prove that the caste of the Petitioner is Lingder is on him. Respondent has contended that the Petitioner is Hindu Teli which being not a scheduled caste, Petitioner is not qualified to contest election on a reserved seat under Sec. 4(a) of the Act. Copy of the order dated November 28, 1984 passed by the Returning Officer, rejecting the nomination paper of the Petitioner is at Exhibit F. The order is rather cryptic and not in proper form. The reason given for rejection of the nomination paper is that the caste certificate produced by the Petitioner is not issued by the competent authority. It is common ground that no candidate raised an objection against the validity of the caste certificate filed by the Petitioner along with nomination paper. But the Returning Officer 'on his own motion' took objection because he was not satisfied about the caste of the Petitioner. Petitioner was informed of the objection and he obtained certificate dated 24th November, 1984 from the Tahsildar, Barshi. It is true that the nomination paper of the Petitioner was rejected on the ground that the caste certificate was not issued by the competent authority. The law does not require that the candidate should produce caste certificate along with the application but in case of reserved seat the candidate has to make a declaration in the prescribed form. However, the Petitioner had produced caste certificate issued by the Special Executive Magistrate, Nagpur, along with his nomination paper as he wanted to show that his caste is Lingder which is a Scheduled Caste. In order to succeed in this petition Petitioner must prove that his caste is Lingder and he is qualified to contest election from reserved constituency.

9. Petitioner relies on oral as well as documentary evidence. The oral evidence consists of testimony of the Petitioner himself examined as P.W. 1, Dr. Laxman Padole (P.W. 2), Subhash Deshpande (P.W. 3), Amvarya Bhadravya Puranik (P.W. 4) and Shivaji Bhagwan Kamble (P.W. 5). The evidence of Dr. Padole (P.W. 2) was recorded before the Joint District Judge, Nagpur, who was appointed as Commissioner as the witness was unable to attend this Court for giving evidence due to old age and bad health. In addition to the oral evidence, Petitioner heavily relies on the following documents :

- (A) Copy of Certificate dated August 1, 1983, issued by Dr. Padole, Special Executive Magistrate, Nagpur. (Produced on record at Exhibit G).
- (B) Copy of Certificate dated November 24, 1984, issued by the Tahsildar, Barshi. (Produced on record at Exhibit H).
- (C) School leaving Certificate dated September 17, 1985, issued by the Head Master, Z.P.C.P.S.(K) Tadvale;
- (D) Entries made in the school register relating to the sons of the Petitioner.

10. Respondent examined himself and produced copies of the Government Resolutions and Circulars in support of his contention that the Special Executive Magistrate, Nagpur, had no jurisdiction to issue caste certificate to a person residing outside his district and to a person not belonging to his own caste.

11. Before I consider the evidence of the parties, I may refer to certain provisions of the Representation of the People Act, 1951. Section 33 provides for presentation of nomination paper and certain requirements for a valid nomination. Sub-section (2) of Section 33 provides that in a constituency where any seat is reserved, the nomination paper must contain a declaration by the candidate specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State. Sub-sections (3) to (6) of Section 33 of the Act are not material for purposes of present petition. Section 35 deals with notice of nomination, the time and place of scrutiny. Section 36, relevant portion of which reads as follows

"36. Scrutiny of nominations.—(1) On the date fixed for the 'scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :—

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :—

Article 84, 102, 173 and 191, Part II of this Act, and Sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that there has been a failure to comply with any of the provisions of section 33 of section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) * * * * *

(4) * * * * *

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the "proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control;

Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) * * * * *

(7) * * * * *

(8) * * * * *

12. It will be noticed under Section 36(2) one of the grounds on which nomination paper can be rejected is that the candidate is not qualified to fill the seat under any of the provisions of Part II of the Act. Section 4 is included in Part II of the Act. It prescribe qualification for membership of the House of the People. Under Section 4(a) a person shall not be qualified to be chosen to fill a seat in case of a seat reserved for Scheduled Castes in any State unless he is a member of any of the Scheduled Castes, whether of that State or any other State.

13. Before considering oral evidence of the Petitioner, I shall first consider the documents produced by him. The case of Petitioner is entirely dependent on the caste certificate dated 1-6-1986 (Exhibit G) issued by the Special Executive Magistrate, Nagpur, Dr. Padole (PW 2). This is the oldest document in sequence of time. Petitioner is relying upon this document to show that he belongs to Lingder caste. Dr. Padole (PW 2) deposed that the Petitioner had got a certificate showing his caste as Teli and on this basis he issued him caste certificate (Exhibit G) certifying his caste as 'Lingder'. The backdrop of obtaining this caste certificate is material. Never before 1983, Petitioner made efforts to obtain caste certificate. It was only on the eve of Parliamentary election he thought of obtaining a caste certificate with an object to contest the election on a reserved seat. The caste certificate (Exhibit G) is not free from doubt. It lacks authority and suffers from infirmities. The first question that arises for consideration is whether Dr. Padole (PW 2) was competent to issue caste certificate. Dr. Padole has not produced his appointment letter to show that in the year 1983 or on the date on which he gave the certificate he was functioning as Special Executive Magistrate. On the other hand, in the cross examination he admitted that in the year 1975 he was appointed as Special Executive Magistrate for a period of four years which would mean that his tenure came to an end in the year 1979. He does not say that thereafter he was re-appointed. In clear words he admitted that he had no documents to show that he was appointed and was working as Special Executive Magistrate on 1-6-1983. He admitted that his appointment was terminated in 1978, which, according to him, was unauthorised and against the order of termination he preferred an appeal to the Chief Minister which is still pending. I gave sufficient time to the Petitioner to produce documentary evidence regarding appointment of Dr. Padole (PW 2) as Special Executive Magistrate in the year 1983. The very fact that neither Dr. Padole nor the Petitioner have been able to produce appointment order of Dr. Padole for the year 1983-84 would show that Dr. Padole was not appointed as Special Executive Magistrate in the year 1983. He had, therefore, no authority and competence to issue the caste certificate. Therefore, the certificate, Exhibit G, issued by Dr. Padole who was known to the Petitioner for many

years has no value. Petitioner cannot claim that he belongs to Lingder community on the basis of certificate issued by Dr. Padole (PW 2) who was not competent to issue the same.

14. Assuming that Dr. Padole (PW 2)'s appointment was in force my attention was invited to the Government Resolution dated 21st March, 1979. This Resolution is at page 74 of the Brochure containing lists of scheduled castes and procedure for issuing caste certificates and its verification published by the Government of Maharashtra in November, 1986. The aforesaid Resolution states that :

"Government is, however, pleased to direct in modification of the existing orders, that the caste certificates issued by the Special Executive Magistrates should be treated as preliminary certificates and the authority to issue a final certificate of caste should be with the Executive Magistrate authorised by the District Magistrate. The Special Executive Magistrates should certify only the castes to which they themselves belong."

The Government issued Instructions along with the Government Resolution dated 21st of March 1979 regarding issuance of caste certificate by the Special Executive Magistrate and prescribed the procedure. Instruction No. 13 states that the Caste Certificates should be issued only to those who have ordinary residence of the place within the jurisdiction of the competent authority. Ordinary residence means residence which is not for the purpose of service, employment, education, confinement in jail etc. In short, it means permanent residence and not a temporary residence. Instruction No. 16A states that a person claiming to a Backward Class should profess either Hindu or Sikh religion and Instruction No. 23 states that the Special Executive Magistrates should certify only the caste to which they themselves belong. The rules also prescribe maintenance of register. The Magistrate is required to obtain an affidavit from the applicant and a warning that in case the contents of the affidavit are found to be false, the applicant is liable to be prosecuted. In the cross-examination Dr. Padole (PW 2) stated that he belongs to Teli caste. He does not say that his caste is Lingder. It is, therefore, obvious that in violation of the Government Instructions that the Magistrate should not issue caste certificate to a person not belonging to his caste. Dr. Padole has issued the caste certificate, Exhibit G. There was no reason for him to have certified that the Petitioner is Lingder when Dr. Padole himself is not Lingder. Another infringement committed was that the Petitioner is not a permanent resident of Nagpur. Petitioner is the permanent resident of village Talwade, which is in Osmanabad district. It is not understood as to why Dr. Padole issued the certificate to a person who is not a permanent resident of Nagpur. Dr. Padole was aware that the Petitioner was not a permanent resident of Nagpur. It must be assumed that Dr. Padole was aware of the Instructions given by the Government from time to time and the Resolutions issued regarding issuance of caste certificates. However, he issued the caste certificate to the Petitioner just to oblige him because they were knowing each other for a long time and with an object to enable the Petitioner to participate in the Parliamentary election. Dr. Padole did not produce the application filed by the Petitioner for obtaining certificate or the affidavit filed by him. Petitioner has admitted that he had verified his affidavit before the Executive

Magistrate, Osmanabad and that affidavit was produced before Dr. Padole for obtaining caste certificate. If petitioner could verify his affidavit before the Executive Magistrate, it is not explained as to why the Petitioner did not request the Executive Magistrate, Osmanabad, or the Special Executive Magistrate, Osmanabad, who were competent persons, to issue caste certificate to him. The fact that the Petitioner was required to go to Nagpur for getting caste certificate speaks volumes and no further comment on the conduct of the Petitioner in this behalf would be necessary. In the cross-examination, Petitioner stated that he is not Hindu. If he does not claim to be a Hindu I fail to understand as to how he could obtain caste certificate that he belongs to Scheduled Caste and contest the election. That admission also destroys his case. It is, therefore, evident that Dr. Padole (PW 2) was neither authorised nor competent to issue the caste certificate, Exh. G. The certificate was provisional and it was issued in violation of the Government Instructions. The Returning Officer was justified in not accepting the certificate. Petitioner cannot establish his claim of belonging to Scheduled Caste on the strength of such caste certificate which has no value.

15. The next document on which Petitioner relies is a copy of certificate dated 24-11-1984, Exhibit H, issued by the Tahsildar, Barshi. The Tahsildar, Barshi, certified that in the School Leaving Certificate of the Petitioner his caste is shown as Lingder and that village Talwade was in Solapur district before 15th August, 1982. What Tahsildar has certified is that in the School Leaving Certificate, caste of the Petitioner is shown as Lingder. The Tahsildar has not certified that the Petitioner belongs to Lingder caste. Exhibit H, therefore, cannot be treated as caste certificate. It would appear that the Petitioner was not able to convince the Tahsildar that his caste was Lingder and, therefore, he was unable to obtain caste certificate from the Tahsildar. This document, therefore, does not establish the claim of Petitioner that he is qualified to contest the election as he belongs to Lingder caste.

16. The next document on which reliance is placed by the Petitioner is the School Leaving Certificate dated 17-9-1985 issued by the Head Master, Z.P.C.P.S.(K). Tadvale. The certificate is at page 61 of the paper book. In Column No. 2 of the certificate the caste of the Petitioner is recorded as 'Hindu Teli'. In Column No. 13 there is an endorsement to the effect that on the basis of caste certificate issued by the Special Executive Magistrate, Nagpur, entry in Col. No. 2 is corrected and the word 'Lingder' is added. After the Petitioner succeeded in getting the caste certificate, Exhibit G, from Dr. Padole (PW 2) he approached the Head Master of the School, made an application and got the word "Lingder" added in Col. No. 2 of the certificate. At present his case reads as 'Hindu Teli plus Lingder'. The school leaving certificate is issued under Rules 17 and 32 of the Secondary Schools Code. In Appendix VI of the Code, procedure has been laid down for correction and changes in the entries of the school record such as, name, caste, date of birth, etc.

17. The rules provide that no change in the entries once made in the school register should be made without obtaining previous sanction of the Education Officer concerned or any other officer of his rank in charge of inspection of the school where the pupil concerned is studying. When such a sanction is obtained the Head Master of the School has to make the change in red ink under his initials the relevant entry as permitted quoting in the remarks column or at the appropriate place the number and date of letter of the Education Officer or such officer who has sanctioned such a change. It is surprising that these instructions were not followed by the Head Master while adding the word 'Lingder' in Col. No. 2 of the Certificate when the earlier caste of the Petitioner was shown as 'Hindu Teli'. The endorsement made in the school leaving certificate shows that the change was made on the basis of the caste certificate issued by the Special Executive Magistrate, Nagpur. It does not show that the Education Officer had given written sanction for addition of the word 'Lingder' in the column of caste in the school record of the Petitioner. Petitioner was admitted in the school in 1947 and he left the school in 1956. In the cross-examination Petitioner admitted that till 1983 he made no efforts to get the school record corrected. It was only when parliamentary elections were coming near, Petitioner got the caste certificate and on the basis of that certificate got his caste shown as 'Lingder' in the school record. It is possible to say that this was manipulated by the Petitioner with ulterior object to enable him to contest the election as scheduled caste candidate. Once it is found that the certificate issued by P.W. 2 Dr. Padole was without any authority, no importance or significance can be attached to the correction made in the school record by the Head Master without prior sanction or order of the Education Officer. Petitioner has produced copies of entries of admission of his two sons wherein caste of his sons is shown as Lingder Teli but those entries are of no use. Children inherit caste of the father. They cannot have independent caste. When the Petitioner has not established that his caste is Lingder, then no importance can be attached to the school record of Petitioner's sons showing their case as 'Lingder'. The edifice built by the Petitioner on the basis of caste certificate Exh. G, issued by Dr. Padole (PW 2) must crumble down for want of authority and violation of procedure and the Rules. There is much substance in the say of the Respondent that all this has been manipulated by the Petitioner because he wanted to contest the election on a reserved seat. In short, the documents relied on by the Petitioner do not establish that his caste is Lingder.

18. That brings me to the oral evidence adduced by the Petitioner. The version of Petitioner is that his ancestors were known as 'Teli's' because they used to feed oil to burning torches at the time of marriages and the torches were carried by the persons belonging to Scheduled Castes such as Dhor and Chambhar. According to him, Lingder people worship 'Ling' and they do not worship Hindu deities. His relatives are settled in Andhra Pradesh, Karnataka, South Maharashtra, Marathwada region but except Shivaji Kamble (PW 5) he has not examined any one of them to prove the customs and traditions followed by Lingder community. He deposed that while he was studying in he was made to sit along with

Scheduled Castes boys and his house is near Chambharwada. There is no evidence to support his version that in the school he was sitting along with the boys belonging to Scheduled Castes. Assuming that the house of Petitioner is written the vicinity of Chambharwada and he was sitting along with the scheduled castes boys, these circumstances are not decisive. He further stated that in the year 1982-83 there was a congregation of his community and at that time he came to know that his caste is Lingder and therefore, he obtained caste certificate from Dr. Padole (PW 2) and got his school record corrected. It may be mentioned that about the factual aspects, after the Petitioner was substituted, he did not amend the petition and alleged the facts or the circumstances on which he is claiming that belongs to Lingder caste. The result is that at the trial, Petitioner was free to make any statement without any fear of being contradicted by the averments made in the petition. The election took place in the year 1984. It looks rather strange that for the first time i.e. in the year 1982-83, Petitioner got knowledge that he belongs to Scheduled Caste. In the cross-examination he made a statement that he is not a Hindu. If the Petitioner is not Hindu how he can claim to be belonging to Scheduled Caste? He candidly admitted that he made no efforts to get caste certificate from 1956 to 1983 and made no efforts to get school record corrected before he obtained the caste certificate from Dr. Padole (PW 2). Dr. Padole (PW 2), who issued he caste certificate does not corroborate the version of Petitioner that belongs to the caste of Petitioner. On the other hand, Dr. Padole stated that he is Hindu Teli while the Petitioner's case is that he is Lingder. Petitioner changed his version saying that his caste is Gheu, which is a sub-caste of Lingder. This change was introduced at the time of evidence because the Respondent produced a letter written by the Government to the Tahsildar, Parbhani, clarifying the position as regard the Lingder community. It is not the case of the Petitioner that only Lingder worshipped 'Ling'. Petitioner has stated in detail the ceremonies performed at the time of burial of dead bodies. Lingayats also bury dead bodies in the same fashion as Lingders do. No evidence has been produced to show that any relation of the Petitioner was buried in the manner deposed to by him. Suffice is to say that the Petitioner has not adduced evidence to show customary rites or ceremonies adopted by Lingder people and those were followed by his ancestors and by him. His interested word that his caste is Lingder cannot be believed.

19. It would appear that the Petitioner never wanted to contest result of election by filing election petition. Had he really aggrieved by the rejection of his nomination paper by the Returning Officer he would have filed the election petition within time. It was because of original Petitioner Mr. Chede's mental condition, this Court issued motions and in pursuance of that notice, Petitioner got himself substituted. Otherwise, Petitioner would not have challenged decision of the Returning Officer rejecting his nomination paper on the ground that he is not qualified to contest the election on a reserved seat. This conduct speaks volumes about the hollowness of Petitioner's claim that he belongs to Scheduled Caste.

20. Petitioner has not examined any elderly person from his family nor any relations who have settled else-where or blood relations, whose claims have been accepted or settled in Court of Law or else-where as Lingder. I find that the evidence of the Petitioner is not convincing and cannot be believed.

21. Subhash Reinchandra Deshpande (PW3) has made a general statement stating that the Petitioner belongs to Lingder caste. In the cross-examination the witness admitted that he has no personal knowledge but as the people in the village say that the caste of Petitioner is Lingder, he also says so. It is obvious that his evidence is not based on personal knowledge and is in the nature of hearsay, in this reason, same must be discarded.

22. The next witness examined by the Petitioner is Anaviraya Puranik (PW 4), Advocate practising at Barshi. He claims to be Mala Jangam which is a Scheduled Caste. He stated that Mala Jangam belongs to priest class and Lingders are their disciples. Lingder deal in oil, leather and they are also known as Gheu. This community is found in old Hyderabad State, Solapur, Akkalkot and border area of Karnataka. This is all he has stated in examination-in-chief. According to him, on two occasions he visited village Talvad or religious ceremonies. There are about 4/5 families of Lingder at village Talvade. Petitioner has not examined anyone from those families in support of his claim that he also belongs to Lingder caste or community. It is not the case of the Petitioner that his ancestors were doing the business of leather tanning which Lingders were doing many years ago. It is true that in recent times the avocation which was followed by the communities or castes have materially changed and now a man cannot be recognised as belonging to a particular caste by his avocation or profession it follows. But the position about 50/60 years back was entirely different. If Lingders were doing leather tanning or dealing in leather goods, the ancestors of Petitioner must be doing the same but evidence in this behalf is totally lacking. Puranik (PW 4) admitted that Lingayata also worship 'Mahadeo Pind.' I do not think that statement of Puranik helps the Petitioner to establish his caste as Lingder.

23. The last witness examined by the Petitioner is Shivaji Kamble (PW 5). According to Shivaji Kamble, Petitioner is nephew of his paternal aunt Yamunabai. Yamunabai and her husband are dead and their two daughters are alive and none of them is examined to establish the relationship. Curiously, Shivaji Kamble also obtained caste certificate on 7-2-1984 from the Tahsildar, Kajji. He admitted that in the school record his caste was recorded as Hindu Teli and he also made no efforts to correct school record though his caste was shown as Hindu Teli and not Lingder. He succeeded in getting caste certificate (Lingder) from Tahsildar on the strength of a certificate issued by the Gram Panchayat and the Talathi. It would appear that the important document in the form of school leaving certificate in which caste of this witness was recorded as Hindu Teli was kept back while obtaining caste certificate from the Tahsildar. No significance therefore, can be attached to the caste certificate obtained by Shivaji Kamble (PW 5).

His evidence on the relationship is also not believable. It is not explained as to why the daughters of Yamunabai are not examined to prove that the petitioner is their relation.

24. I have already discussed the evidence of Dr. Padole (PW 2). He claims to be of Teli caste and he has knowledge regarding Lingder caste. Even then Dr. Padole issued the caste certificate to the Petitioner in flagrant breach of the instructions issued by the Government.

25. This is all the oral evidence that has been addressed by the Petitioner. Considering the entire evidence of the Petitioner and his witnesses I find that it is not convincing, reliable and acceptable. The evidence is wholly insufficient to prove that the Petitioner belongs to Lingder caste which is a scheduled caste. The oral evidence is not consistent with the documentary evidence and the documentary evidence is not worthy of credence. Petitioner has not averred in the petition about the custom, customary traditions and other features of Lingder community nor has led evidence to show that those rites or customs are being followed by his family since generations and that they have been known and recognised as Lingder. On the other hand, the earliest document in the form of school leaving certificate shows that the caste of the Petitioner was recorded as Hindu Teli. It would appear that when the Petitioner decided to contest the parliamentary election on a reserved seat he got the certificate showing himself to be belonging to Lingder caste and filed the nomination paper which was rightly rejected by the Returning Officer. I find that the Petitioner has failed to prove that he belongs to Lingder caste. The result is that he was not and is not qualified to contest election on a reserved seat.

26. Mr. Scindia, learned Advocate for the Petitioner, referred to the decision in Ramkishun Singh and another v. Tribeni Prasad Singh & Another (AIR 1959 Patna 356). It has been pointed out that under sub-section (2) of Section 36 of the Act Returning Officer has power to hold summary inquiry before rejecting any nomination paper on the basis of any objection or on his own motion. Under Proviso to sub-section (5) of Sec. 36 he may allow time to the candidate concerned to rebut objection by a day "not later than the next day but one following the date fixed for scrutiny". The Returning Officer must exercise the discretion vested in him by the section in a proper manner so that no one is prejudiced by his order. Respondent alleged that the Petitioner was made aware that the caste certificate produced by him was not valid. Before scrutiny of the nomination paper he had obtained certificate from the Tahsildar which also was of no use. Petitioner could not produce any evidence before the Returning Officer in support of his claim that he belongs to Scheduled Caste. It is true that the nomination paper was rejected on the date of scrutiny. I am not shown that any prejudice is caused to the Petitioner by the procedure followed by the Returning Officer. Whatever evidence the Petitioner could have produced he has produced in this petition and on consideration of that evidence I must say that the Petitioner has failed to prove that he was qualified to contest the

election on a reserved seat on the date of scrutiny of nomination paper and even today as he does not belong to the Scheduled Caste.

27. Mr. Scindia referred to paragraph 420 under heading 'Jatiya Sanstha' in Marathi Vishwakosh Vol. VI. The paragraph deals with avocations or professions of lower castes and how they were useful to the society. It also mentions that for want of dignity of labour work, those people could not become economically strong. I find that the contents of the paragraph are not relevant.

28. Mr. K. G. Nawander, learned Counsel for the Respondent, cited the decision in Kumari T. Varalakshmi v. Union of India and others (AIR 1986 Delhi 377), wherein Government of India had issued instructions that the revenue authority of one district could not be competent to issue caste certificate in respect of a person belonging to another district. Similar instructions have been issued by the Government of Maharashtra and the record shows that the certificate was issued by Dr. Padole (PW 2) in contravention of those instructions and without any authority.

29. Another case relied upon by Mr. Nawander is reported in Devidas Baburao Hajare and another v. State of Maharashtra and another (1987 MHLJ 801) in which claim to reservation of a seat in college was made on the basis of school record of the father which was got changed. The father's caste was shown as Lohar which is a non-backward caste but the word 'Gadi' was pre-fixed and on that basis the Magistrate issued the caste certificate. Here in this case also we find that originally caste of the Petitioner was recorded as Hindu Teli but on the strength of caste certificate issued by Dr. Padole (PW 2), the Head Master without any authority added the word 'Lingder' in the column of caste in the school leaving Certificate of the Petitioner.

30. Mr. K. G. Nawander argued that the Petitioner has been substituted without following the procedure laid down in Order 32 of the Code of Civil Procedure. It would appear that no proper inquiry was made about the mental condition of the original Petitioner and on the basis of statement made by the Counsel, notice was issued and application of the present Petitioner was allowed by the Court before the case was assigned to me. The procedural defect has not caused any prejudice to the Respondent. Respondent has also challenged the constitutional validity of Section 100(1)(c) of the Act but that point is left open and is not decided in this petition.

31. I hold that the Petitioner has not proved that he belongs to Lingder caste. On the date of scrutiny of nomination paper the Petitioner was not qualified to contest the election on a reserved seat as he does not belong to the Scheduled Caste. I answer the issues accordingly.

32. In the result, petition fails and it is dismissed.

Petitioner Kondappa Sadashiv Kore shall pay costs of Rs 1,000 (Rupees One Thousand only) to the Respondent Arvind Kamble. Liberty to the

Respondent to withdraw the sum of Rs. 1,000 from the security deposit made by the present Petitioner in the present election. Liberty to the present Petitioner to withdraw balance amount lying with the Additional Registrar after payment of costs to the Respondent.

Petitioner to bear his own costs.

Additional Registrar, High Court of Judicature of Bombay, Aurangabad Bench, is directed to communicate decision in this election petition to the Speaker, Lok Sabha, New Delhi and the Election Commission, New Delhi and also send an authenticated copy of decision to the Election Commission as per Section 103 of the Representation of the People Act, 1951.